IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 35 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SWASTIK TEXTILE ENGINEERING PVT LTD

Versus

VIRJIBHAI MAVJIBHAI RATHOD

Appearance:

1. Special Civil Application No. 35 of 2000

MR AK CLERK for Petitioner No. 1

MR SONGARA for MR GK RATHOD for Respondent No. 1

MR RV DESAI Ld. AGP for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 07/03/2002

ORAL JUDGEMENT

1. The matter was heard on 30.1.2002 and after the arguments of Mr. Clerk learned advocate appearing for

the petitioner were over, Mr. Songara for Mr. G.K.Rathod learned advocate appearing for respondent no.1 sought some time to get ready with the matter and to make his submissions, time was granted.

2. The short question arising in this petition is that the respondent workman filed a Recovery Application No.868 of 1994 before the Labour Court, Ahmedabad for various amounts, details of which are set out in para.5 of the judgement and order dated 17.5.1999, a coy of which is produced at Annexrue-A to this petition. As many as seven items are mentioned in para.5 of the said judgement and order. Of all those seven items, first two items are granted by the Labour Court, Ahmedabad.

3. Mr. Clerk learned advocate submitted that to appreciate the contention raised by the petitioner in this petition, few facts are required to be noted. Mr. Clerk submitted that earlier a Reference being Reference No. 1918 of 1983 was filed by the present respondent workman against the present petitioner which was disposed of on 29.4.1991. Reinstatement with 75% back wages was awarded. That 75% back wages were quantified to Rs.61,079.70 and as that amount could not be paid, the respondent workman had filed Misc. Civil Application No. 1622 of 1991 before this Court. The same was disposed of by an oral order dated 13.2.1992, copy of which is annexed as Annexure-B to this petition at Page-17. Mr. Clerk submitted that it is clear from the perusal of the said order that the said contempt application was disposed of by this Court by directing the petitioner to make payment of Rs.10,000/- to the workman latest by 29.2.1992 and the balance amount was to be paid to the respondent workman in five equal installments.

4. Mr. Clerk submitted that payment of those five installments could not be made as contemplated in the order passed by this Court, hence the respondent workman had filed another Misc. Civil Application No. 980 of 1992. The papers of that Misc. Civil Application were called for and it was found that same was disposed of by an order dated 6.10.1992. The said order reads as under :

"Mr. K.M.Patel, L.A. appearing for the respondents states that the impugned order has been duly complied towards remaining back wages as per the following detail :

Cheque No. Date Amount.

210352	12.10.92	10,000/-
210353	12.10.92	11,013/-
210354	28.12.92	10,266-76

Mr. Rathod, L.A. for the petitioner has received the above cheques on behalf of his clients. He also states that one cheque issued earlier on 1.6.1992 amounting to Rs. 2266.18 ps. has not been presented so far and the same will also be presented on 12.10.1992. In view of this, nothing further requires to be done. However, in the event of any difficulty, petitioner will be at liberty to revive this petition. Petition is disposed of accordingly."

5. Mr. Clerk learned advocate submitted that it is thereafter that the present Recovery Application is filed by the respondent workman in the year 1994 and in that, amount referred hereinabove are claimed under various heads, details of which are set out in para.5 of the judgement and order of the said Recovery Application. Mr. Clerk learned advocate also submitted that contents of para.5 of the judgement and order are important for the purpose of appreciation of controversy involved in this petition. In para.5 of the said judgement and order it is stated that the petitioner Company had dismissed the respondent workman on 7.5.1982. The reference pertaining to that being Reference No. (LCA) No.1918 of 1983 had ended in an award of reinstatement with continuity of services with 75% back wages. As that award was not implemented, the contempt of court proceedings were taken before this Court. In those proceedings, there was a compromise between both the parties and the respondent workman was reinstated on 5.2.1992. Towards 75% back wages, an amount of Rs.6179.70 ps. was agreed to be paid to the respondent workman. Mr. Clerk learned advocate submitted that in view of these facts stated in para.5 of the judgement and order of the Labour Court, Ahmedabad in the Recovery Application, it is clear that so far as 75% back wages is concerned, the same is already paid to the respondent workman. In view of that, the present amount cannot be claimed by the respondent workman. In the alternative, Mr. Clerk, the learned advocate submitted that if the present amount is claimed dehors the earlier award then the present recovery application is not maintainable because there is no adjudication for the amount claimed in this Recovery Application.

6. Mr. Clerk learned advocate relied upon the

judgement in the matter between Bipinchandra P. Singwala Vs. Navin Fluorine Industries and Another reported in 1981 (22) GLR 1070 and submitted that this Court has held in the said judgement that, "... the back wages will include all the payments to which a permanent employee would be entitled to, such as dearness allowance, increments and pensions etc. ..." Mr. Clerk submitted that he takes support from the said decision to contend that the amounts which are claimed in the present Recovery Application are included in the term, "back wages" and as there was a settlement and there was compliance of that settlement, nothing remains payable towards 'back wages' ordered under the earlier Reference. Mr. Clerk leaned advocate submitted that assuming against the present petitioner that the amount claimed by the respondent workman in the Recovery Application is not included in 'back wages' then it requires a fresh adjudication because until there is an adjudication, it cannot be said that there is an existing right of the respondent workman to get these amounts.

7. Having found substance in the submissions made by Mr. Clerk leaned advocate for the petitioner - Union, the present petition is required to be allowed. The judgement and order of the Labour Court, Ahmedabad in Recover Application No. 686 of 1994 dated 17.5.1999 is hereby quashed and set aside. On both the counts the submission of Mr. Clerk learned advocate deserves to be accepted. There being settlement between the parties and amount being quantified, there being two contempt proceedings before the Court and in none of those proceedings these amounts were claimed, the petitioner cannot claim such amount by filing a fresh Recovery Application. The alternative submission of Mr. Clerk is also equally sound that if these amounts are claimed dehors the statement of the earlier then there has to be fresh adjudication for this amount and in absence of such adjudication, Recovery Application is not maintainable. The petition is allowed. Rule is made absolute.

(Ravi R. Tripathi,J.)
(vipul)